

ORIGINAL
DELTA COUNTY, COLORADO

BRADLEY K. KOLMAN, COUNTY ATTORNEY
501 PALMER STREET - SUITE 105 - DELTA - COLORADO - 81416-1764
PHONE: (970) 874-2090 FAX: (970) 874-2500

August 31, 1999

EX PARTE OR LATE FILED

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte Letter Re: Cases WT 99-217, CC 96-98

Dear Secretary Salas:

A letter was sent to you on August 25, 1999, a copy of which is enclosed herewith, which indicated that two copies of an *ex parte* presentation were enclosed and being sent to you. A temporary secretary filled in for me while I was on vacation and while doing the filing this morning, I noted that there were two extra copies of the presentation with our file copy. Because I am not sure she actually enclosed those copies in your letter, Mr. Kolman asked me to send them to you with this letter. We would prefer that you have too many copies than none at all.

Sorry for any inconvenience this may have caused you.

Thank you for your attention.

Very truly yours,

A handwritten signature in cursive script that reads "Carol Ann James".

Carol Ann James
Secretary/Paralegal

Enclosures
caj

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Ex Parte Letter Re: Cases WT 99-217, CC 96-98

Dear Secretary Salas:

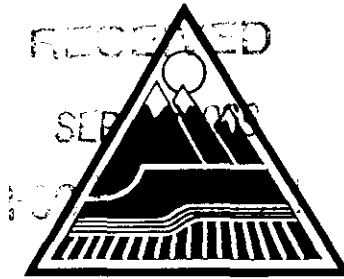
Enclosed are two (2) copies of an ex parte presentation in the above-referenced proceeding.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bradley K. Kolman".

Bradley K. Kolman

BKK/vw



DELTA COUNTY, COLORADO

BOARD OF COUNTY COMMISSIONERS

COUNTY COURTHOUSE - 501 PALMER STREET - SUITE 227 - DELTA - COLORADO - 81416

PHONE: (970) 874-2100

FAX: (970) 874-2114

Dist. 1: Jim D. Ventrello

Dist. 2: Donna R. Ferganchick

Dist. 3: Ted H. Hayden

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554\\

EX PARTE OR LATE FILED

Ex Parte Filing in cases WT99-217; CC 96-98

Dear Chairman Kennard:

Please do not adopt the rule proposed in these cases allowing any phone company to serve any tenant of a building and to place their antenna on the building roof. Although we are a County without much zoning or many land use regulations, we are concerned about the preservation of local control. The following argument is not original with us, but we agree with these principles.

In some states 70 or more new phone companies have been certificated to provide service. Add in the wireless phone companies and under your rule you may have 100 companies allowed to place their wires in a building, and their antennas on the roof-all without the landlord's permission.

The FCC lacks the authority to do this. It would violate basic property rights-a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction which under Federalism and the tenth Amendment you may not preempt.

For example, building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type-such as the likelihood of earthquakes, hurricanes and maximum amount of snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics

of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns-which we do every day, with success. Everyone wants garbage picked up, no one wants a transfer station. Everyone wants electricity, no one wants a substation near their home.

The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. there is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

Local management of rights-of-way is essential to protect the public health, safety and welfare. Congress has specifically prohibited you from acting in this area.

We believe the telephone providers' complaints about rights-of -way management and fees are overblown, as shown by the small number of court cases on this-only about a dozen nationwide in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies this number of cases shows that the system is working, not that it is broken.

Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new phone companies is too high. the FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons please reject the proposed rule and take no action on rights of way and taxes.

Very truly yours,

BOARD OF COUNTY COMMISSIONERS
OF DELTA COUNTY, COLORADO

By: 

Chair

cc:

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Mr. Jeffrey Steinberg
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Gloria Tristani
Federal communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Susan Ness
Federal communications Commission
445 12th Street SW
Washington, DC 20554

Ms. Magalie Roman Salas (two copies)
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Mr. Lee Ruck
Executive Director
NATO
1650 Tysons Road
Suite 200
McLean, VA 22102-3915

Mr. Thomas Frost
Vice President, Engineering Services
BOCA International
4051 West Flossmoor Road
Country Club Hills, IL 60478

The Honorable Ben Nighthorse Campbell
United States Senator
300 Main Street
Grand Junction, CO 81501

Mr. Joel Tauenblatt
Wireless telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

International Transcription Services
445 12th Street SW
Room CY-B402
Washington, D.C. 20554

Mr. Kevin McCarty
Assistant Executive Director
U.S. Conference of Mayors
1620 I Street
Fourth Floor
Washington, D.C. 20006

Ms. Barrie Tabin
Legislative Counsel
National League of Cities
1301 Pennsylvania Ave., N.W.
Washington D.C. 20004

Mr. Robert Fogel
Associate Legislative Director
National association of Counties
440 First Street, N.W.
8th Floor
Washington D.C. 20001

The Honorable Scott McInnis
United States Congressman
327 N. 7th Street
Grand Junction, CO 81501

The Honorable Wayne Allard
United States Senator
400 Rood Avenue
Grand Junction, CO 81501